



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Infotec Development, Inc.--Reconsideration

File: B-244475.5

Date: November 1, 1991

John P. Carey, Esq., Paul, Hastings, Janofsky & Walker, for the protester.

C. Douglas McArthur, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

General Accounting Office (GAO) affirms dismissal of protest for failure to file comments within 10 days of the agency report due date, where protester argues that it lacks experience and understanding of the bid protest process and did not recognize agency report as such, since GAO had in writing advised protester of report due date and its obligation to notify GAO if it did not receive report by due date.

DECISION

Infotec Development, Inc. requests reconsideration of our August 6, 1991, dismissal of Infotec's protest against the rejection of its proposal as outside the competitive range under request for proposals No. F33657-91-R-0005, issued by the Department of the Air Force. We dismissed the protest because Infotec failed to file its comments on the agency report, notify our Office of its continued interest in the protest, or request an extension for filing within 10 working days after the report due date, as required by our Bid Protest Regulations, 56 Fed. Reg. 3759 (1991) (to be codified at 4 C.F.R. § 21.3(j)). The protester argues that it did not recognize what it received as the agency report because it did not include documents requested by Infotec in its protest submission.

We affirm our dismissal.

Infotec filed its initial protest on June 14. We responded with a notice in which we acknowledged receipt of the protest and delineated the procedures and deadlines for the filing of both the contracting agency report and the

protester's comments on the report. Specifically, our notice stated that the agency report was due on July 22, 1991, and that under our Bid Protest Regulations, the protester was required to submit written documents, or to advise our Office that it desired to have the protest decided on the existing record, within 10 working days of receipt of the report. The notice also advised the protester to notify our Office promptly if, in fact, it did not receive the agency report on the due date; otherwise, we would assume that the protester received its copy of the report when we received ours and, if we did not hear from the protester within 10 working days of our receipt of the report, we would dismiss the protest. In addition, upon issuing a notice of protective order on June 19, our Office notified the protester orally and in writing of its need to apply for access to protected material in accordance with our Bid Protest Regulations, 56 Fed. Reg. 3759 (to be codified at 4 C.F.R. § 21.3(d)(3)); we also advised the protester of the likelihood that the agency would classify many, if not all, of the documents requested as protected material. We received the agency report early, 9 working days prior to the due date of July 22. We waited until August 6, 11 working days beyond the due date, before dismissing the protest.


In requesting reconsideration, the protester does not dispute that it received the agency report prior to the due date and well before we dismissed its protest on August 6. The protester argues, however, that with its initial protest it filed extensive request for documents including documents related to the evaluation of its proposal; since the Air Force's response, which included little beyond a contracting officer's statement of fact and memorandum of law, did not contain the documents that the protester had requested, the protester did not realize that its 10-day response time had begun to run.¹

Even if, as the protester contends, it did not recognize the agency report as such, it was obligated, nevertheless, to advise our Office that it had not received the agency report

¹The agency report sent to Infotec consisted specifically of a one-page competitive range determination, and slides and briefing notes from the protester's debriefing, which were provided to the protester; the remainder of the report received by our Office, which ran to 12 volumes, consisted of documents either already in the protester's possession (i.e., the solicitation and the protester's proposal) or documents identified as protected material by the agency (i.e., evaluation results).

on the due date of July 22; the protester failed to do this.² The protester argues that its failure to file comments was excusable, given its lack of experience and understanding of our bid protest process. Protesters are charged with constructive notice of our regulations which are published in the Federal Register. The regulations are designed to ensure expeditious resolution of protests, for the benefit of both protesters and the procurement system in general. The filing deadlines in our Bid Protest Regulations, prescribed under the authority of the Competition in Contracting Act of 1984, are designed to enable us to comply with the statutory mandate to expeditiously resolve protests. 31 U.S.C. § 3554(a) (1988); Stocker & Yale, Inc.--Recon., B-238977.2, July 24, 1990, 90-2 CPD ¶ 67. Further, while the protester asserts that the resolution of its protest would not unduly delay the procurement or prejudice the agency, this assertion does not provide a basis for waiving our rules requiring timely submission of comments on the agency report. Our reopening of the file would be inconsistent with the goal of providing a fair opportunity for protesters to have their objections considered without unduly disrupting the procurement process. Discount Mach. & Equip., Inc.--Recon., B-239104.2, Aug. 6, 1990, 90-2 CPD ¶ 106.

The dismissal is affirmed.


Ronald Berger
Associate General Counsel

²In fact, the report cover letter addressed to our Office, a copy of which the protester received, stated, "This is in response to your request for a report For the reasons discussed in the attached agency report, we believe the protest should be denied" (Emphasis supplied.)